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*Crl.O.P.No.12791 of 2021*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.12791 of 2021  
and Crl.M.P.Nos.7069 & 7072 of 2021

1. Siddartha Pande
2. Benedict Ravinran
3. Jiss Manapurath Jose
4. Jitesh Nair
5. Rahul Tanaji Pol
6. Sanjay Gon Slaves
7. Saju Varghese

...Petitioners

Vs.

1. State rep. by  
The Inspector of Police,  
Central Crime Branch,  
Cyber Crime Cell,  
Vepery, Chennai.  
(Crime No. 72 of 2009)

2. Financial Software & Systems Pvt. Ltd.,  
Rep. by its Legal Officer,  
Debashish Josh  
502-A, South Block,  
Tidel Park, No.4,  
Canal Bank Road,  
Chennai – 600 113.

... Respondents

**Prayer:** Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.2323 of 2021 on the



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file of the learned XI Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioners : Mr.N.R.Elango, Senior Counsel  
For M/s.RRR Legal  
For Respondents  
For R1 : Mr.A.Gopinath  
Government Advocate (Crl. Side)  
For R2 : Mr.G.Prabakaran  
For M/s. R and P Partners.

### **ORDER**

This petition has been filed to quash the proceedings in C.C.No.2323 of 2021 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai, thereby taken cognizance for the offences punishable under Sections 380, 408 r/w. 120(b) of IPC, as against the petitioners.

2. The case of the prosecution is that the second respondent company is a private limited company incorporated under the Companies Act, 1956. It carries on business, inter alia, of providing end to end, turnkey solutions and products in the area of transaction processing and payment solutions at customer location. It also provides a range of implementation and product design services in the areas of transaction



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processing and payment solutions and also provides hosted transaction processing and switching services including terminal deployment and managed services. It also licensed the software products and also support services like customization and production support. It offers the software products as a comprehensive package comprising not only of software license and maintenance including site technical support, customization, production support etc. There was a strictly instruction to their employees to maintain the confidentiality of the confidential and proprietary information of the complainant. The details of confidentiality obligations would be spelt out in the appointment order issued by the company. It is also entered into non disclosure agreement between the employees. Therefore, the employees are required to strictly abide by the terms and conditions of confidentiality given in the appointment order.

3. Accordingly, the accused A1 to A7 had joined in the complainant company at different times and they were holding different posts. They were aware of the confidentiality obligations and they shall not disclose the complainant's confidential details and the customer data base to any other person. Further they shall not make use of the confidentiality obligations to get competitive advantage for themselves.



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The accused resigned one by one and started competitive business by using the confidential information obtained from the complainant during their employment. It is blatant violation of the confidential obligations signed by them and also breach of trust.

4. It is further alleged that during their employment, the accused persons started company carrying on business similar to that of the complainant and also duly incorporated in the name and style of Concerto Software & Systems Private Limited on 28.05.2008, bearing registration No.182792 in which A1 to A4 are Directors. They were taken away the customer data and confidential information even before their resignation from the company. The complainant's intellectual properties used by the accused for preparing presentation materials during their employment with the complainant which contains the business details of the complainant and shared with the other accused persons. Further, the complainant was carrying on projects for various banks in the Middle East and the same is now being usurped by the accused company, which was floated during their employment with the complainant. The accused also used the technical know-how stolen from the complainant which was made available to the accused by the complainant knowing fully well that



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they should not misuse the confidential information and technical know-how of the complainant, thereby the complainant suffers huge loss.

5. On receipt of the said complaint, the first respondent registered a FIR in Crime No.72 of 2009 for the offences under Section 406 r/w. 120(b) of IPC. After completion of investigation, they filed final report and same has been taken cognizance for the offences under Section 380, 408 r/w 120(b) of IPC in C.C.No.2323 of 2021, on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai.

6. The learned Senior Counsel appearing for the petitioners submitted that no property was stolen by the petitioners. After their resignation, they started new company in the name and style of Concerto Software & Systems Private Limited. They are only competitive to the defacto complainant company and there was no property stolen by them. The technology which was used by the defacto complainant and the petitioners are one and the same and it is common to all. Therefore, it would not amount to theft. There was no property involved in order to attract the offence under Section 406 of IPC. Whatever the technology and methods used by the petitioners in their new company are available



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in public domain. He further submitted that the statement recorded under Section 161 of Cr.P.C., revealed that the presentation about their proposed company was E-mailed by them. It would not amount to any theft or breach of trust.

7. The learned counsel appearing for the second respondent submitted that there is intellectual property which is owned by the defacto complainant. Even at the time of employment, they were entered into non disclosure agreement and accordingly there were not supposed to disclose and use the intellectual property which was handled by them for the defacto complainant clients. Therefore, there is clear case of theft and breach of trust. Therefore, there are ingredients available to constitute the offences under Sections 380, 408 r/w 120(b) of IPC.

8. The learned Government Advocate (Crl. Side) submitted that the petitioners are arrayed as A1 to A7. They were charged for the offences under Sections 380, 408 r/w 120(b) of IPC. All the grounds raised by the petitioners can be considered before the trial Court during the trial.



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9. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

10. There are totally seven accused in which the petitioners are arrayed as A1 to A7. All the petitioners are ex-employee of the second respondent. They had led the second respondent to believe by making false representation that they would protect the interest of the second respondent and also its confidential information. In fact, while entering into the service, they executed non disclosure agreement. Even then, they had with malafide intent induced the second respondent to part with their confidential information, technical know how, customer data base and project information. Thereafter, they had been entrusted with the said work to the respective clients. However, they had malafied intention to cause wrongful loss to the second respondent, started a new company even during their employment with the second respondent. It is gross violation of trust placed on the petitioners by the second respondent.

11. As rightly pointed out by the learned counsel appearing for the second respondent, the entire software owned by the second respondent as intellectual property. The said data base and other project



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which supported to their respective clients were stolen by the petitioners and started new company. Therefore, the petitioners company is not competitive company to the second respondent. Whereas, they were stolen the entire software and started the new company. Therefore, there are ingredients to attract the offences under Sections 380, 408 r/w. 120(b) of IPC, as against the petitioners. That apart, all the grounds raised by the learned counsel appearing for the petitioners are mixed question of fact and it cannot be considered.

12. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.579 of 2019** dated **02.04.2019** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.**, wherein it is held as follows:-

*" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on*



*the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.*

*13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.*

13. The Hon'ble Supreme Court of India dealing in respect of the very same issue in ***Crl.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Investigation Vs. Arvind Khanna***, held as follows:

*“19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its*



*inherent jurisdiction under Section 482 Cr.P.C.*

*20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."*

14. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** passed in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

*"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.*

.....

*13. A look at the complaint filed by the appellant*



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*would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."*

15. In view of the above discussions, this Court is not inclined to quash the proceedings and the Criminal Original Petition stands dismissed. The trial Court viz., the learned XI Metropolitan Magistrate, Saidapet, Chennai, is directed to complete the trial within a period of six months from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petitions are closed.

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Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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**G.K.ILANTHIRAIYAN. J.**

rts

To

1. The XI Metropolitan Magistrate,  
Saidapet, Chennai,
2. The Inspector of Police,  
Central Crime Branch,  
Cyber Crime Cell,  
Vepery, Chennai.
3. The Public Prosecutor,  
Madras High Court,  
Chennai.

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